

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201901491	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/07/2019 10:45 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 90	18 Mo. SOL 8/7/2020	EO SOL 3/24/2021	
Date/Time CV Reported Thu, 02/07/2019 10:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/18/2019 12:41 PM		

  

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

  

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

  

Subject Officer(s)	Shield	TaxID	Command
1. LT Timothy Fox	00000	944571	090 PCT
2. POM Ever Cruz	09420	961712	090 PCT

  

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jorge Ramos	03540	964719	PSA 3
2. POM Kevin Lynch	05413	958850	PSA 3

  

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Fox	Abuse: Lieutenant Timothy Fox stopped § 87(2)(b)	§ 87(2)(b)
B.POM Ever Cruz	Abuse: Police Officer Ever Cruz stopped § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On February 18, 2019, § 87(2)(b) filed the following complaint on behalf of § 87(2)(b) with the CCRB by phone.

On February 7, 2019, at approximately 10:45 p.m., § 87(2)(b) and § 87(2)(b) arrived at § 87(2)(b) in Brooklyn. As they arrived, a friend that lived in the building, whose name was not obtained by the investigation, set off his car alarm as a joke on the two. The alarm stopped shortly after, and § 87(2)(b) sat inside his car, which was running, talking with § 87(2)(b) who stood outside the car. After about five minutes, two officers, Lt. Timothy Fox and PO Ever Cruz from the 90<sup>th</sup> Precinct, pulled up behind § 87(2)(b) with their lights and sirens on and approached the vehicle (**Allegation A and B: Abuse of Authority;** § 87(2)(g) PO Cruz asked § 87(2)(b) for his license and registration, which he provided. PO Cruz then explained that they were responding to a call for a car alarm, and § 87(2)(b) responded that a friend had set it off as a joke. Two additional officers, PO Jorge Ramos and PO Kevin Lynch from Housing Unit 3, arrived on scene. The four officers and § 87(2)(b) engaged in a back and forth conversation, in which § 87(2)(b) was ultimately summonsed for § 87(2)(b). § 87(2)(b) was not issued a summons or arrested as a result of this incident.

Body-worn camera (BWC) footage for Lt. Fox, PO Cruz, PO Ramos, and PO Lynch were all provided to the investigation [BR01, BR02, BR03, and BR04, respectively]. § 87(2)(b) also recorded the incident of his cellphone, which he provided to the investigation [BR05].

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Lieutenant Timothy Fox stopped** § 87(2)(b)

**Allegation (B) Abuse of Authority: Police Officer Ever Cruz stopped** § 87(2)(b)

It is undisputed that Lt. Fox and PO Cruz stopped § 87(2)(b) in response to a 911 call regarding car alarm.

§ 87(2)(b) testified that a friend of his and § 87(2)(b) had set the alarm off as a joke, but that it had stopped by the time Lt. Fox and PO Cruz arrived on scene, approximately five minutes later [BR06]. PO Cruz and Lt. Fox informed the two men that they were responding to a car alarm, to which § 87(2)(b) explained that it had been set off as a practical joke by their friend. He stated that the officers did not object to this explanation until they recognized § 87(2)(b) and asked § 87(2)(b) for his identification. He provided his license and registration to PO Cruz, which was run. PO Cruz returned § 87(2)(b) his license, and § 87(2)(b) did not have any further interaction with the officers. At one point, § 87(2)(b)'s friend, who had activated the car alarm, came out and explained to the officers that he set off the alarm as a joke. § 87(2)(b) was consistent with § 87(2)(b) but did not mention the car alarm [BR07].

Lt. Fox testified that he received a radio call of two males breaking into a vehicle [BR08]. Neither Lt. Fox nor PO Cruz recalled if a description was provided of the perpetrators or the vehicle being broken into. Upon arriving at the scene with PO Cruz, Lt. Fox observed § 87(2)(b) and § 87(2)(b) both sitting in a vehicle. They were the only individuals present at the location for the car alarm, and the officers approached them. PO Cruz obtained § 87(2)(b)'s license and registration. Lt. Fox stated that he explained the reason for the stop to the two men. PO Cruz was primarily consistent with Lt. Fox, except he stated that only § 87(2)(b) was inside the vehicle [BR09]. He additionally testified that he explained the stop to § 87(2)(b) and that the radio run call was assigned to Housing Unit 3, but that they arrived on scene first. BWC footage was consistent with the officers' statements. [BR01 and BR02, respectively]. According to the 911 call, the anonymous female caller only heard the car alarm and an individual shouting that

someone was trying to steal a car, as she was not at the location [BR10]. She did not provide a description of the vehicle being stolen or of the male allegedly involved. A callback by the 911 operator conducted during the radio run communications confirmed that the caller did not observe any individual taking physical actions akin to breaking into a vehicle [BR11].

People v. De Bour 40 N.Y.2d 210, (1976) ruled that where a police officer entertains reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the CPL authorizes a forcible stop and detention of that person [BR12].

§ 87(2)(g) [REDACTED]

§ 87(4-b), § 87(2)(g) [REDACTED]

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been party to [BR13].
- § 87(2)(b) [REDACTED] has been party to five CCRB complaints [BR14].
  - § 87(2)(b) [REDACTED]

§ 87(2)(b)

- Lt. Fox has been a member of service for 12 years and has been a subject in six CCRB complaints and 16 allegations, none of which has been substantiated.
  - Lt. Fox is subject in an open case #201901595, in which allegations of a vehicle stop, vehicle search, discourtesy – word, seizure of property, question, refusal to provide name and shield, and failure to provide a business card are pled.
  - Lt. Fox has had two previous vehicle stop allegations pled against him, neither of which were substantiated.
- PO Cruz has been a member of service for three years and has been subject of two CCRB complaints and four allegations. PO Cruz has had one prior vehicle stop allegation against him, which was not substantiated.
  - A failure to provide a business card allegation was substantiated for case #201900958, for which he was given Command Level Instructions.

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint. § 87(2)(g), § 87(2)(b)
- According to the New York City Officer of the Comptroller, no Notice of Claim was filed in regards to this incident [BR15].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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